

## Disadvantaged Business Enterprises (DBE) Program

The Indiana Department of Transportation will ensure that all certified Disadvantaged Business Enterprises (DBE) will be afforded full opportunity to submit statements of interest and will not discriminate against any consultant on the grounds of race, color, religion, sex, disability, national origin, or ancestry in the selection process. Contract DBE goals are incorporated into Requests for Proposals if, in the determination of INDOT, available DBE subconsulting opportunities exist.

All consultants submitting proposals shall comply with the following:

A. INDOT Disadvantaged Business Enterprise Program:

1. General

- a. Notice is hereby given to the consultant or subconsultant that failure to carry out the requirements set forth in 49 CFR, Part 26 shall constitute a breach of contract and, after notification, may result in termination of the contract or such remedy as the state deems appropriate.
- b. The above-referenced section requires that the following policy and disadvantaged business enterprise (DBE) obligation be included in all subsequent agreements between the consultant and any subconsultant:
  - (1) It is the policy of the Indiana Department of Transportation that disadvantaged business enterprises, as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this contract. Consequently, the DBE requirements of 49 CFR Part 26 will apply to any contract entered into as a result of this Request for Proposals.
  - (2) The consultant agrees to ensure that disadvantaged business enterprises, as defined in 49 CFR Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under contracts with INDOT. In this regard, the consultant shall take all necessary and reasonable steps, in accordance with 49 CFR Part 26, to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The consultant shall not discriminate on the basis of race, color, national origin, age, sex, disability, or status as a veteran in the award and performance of federally-assisted contracts.
- c. It is required that the consultant shall take positive affirmative actions and put forth good faith efforts to use DBE subconsultants, vendors or suppliers as more fully set forth below.

2. Definitions

The following definitions apply to this section:

- a. "Disadvantaged Business Enterprise" or DBE means a for profit small business concern that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals, and whose management and daily

business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

- b. "Small Business Concern" means a small business concern as defined pursuant to section 3 of the Small Business Act and SBA regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR Sec. 26.65(b).
- c. "Socially and Economically Disadvantaged Individuals" means (i) any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis; or (ii) any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - (1) Black Americans which includes persons having origins in any of the Black racial groups of Africa;
  - (2) Hispanic Americans which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - (3) Native Americans which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - (4) Asian-Pacific Americans which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
  - (5) Subcontinent Asian Americans which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
  - (6) Women;
  - (7) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

3. DBE Subcontracts

- a. This Request for Proposal contains a DBE goal. This goal is the *desired minimum* amount to be subcontracted to certified DBEs. The consultant is required to identify DBE subconsultants prior to submitting its proposal in the attached Affirmative Action Certificate, attached hereto.
- b. The consultant must either meet the goal or demonstrate to INDOT that good faith efforts were taken to meet the goal. The phrase "good faith efforts" is defined in the federal DBE regulations as affirmative actions "that one could reasonably expect a [consultant] to take if the [consultant] were actively and aggressively trying to obtain DBE participation sufficient to meet the goal." 64 FR 5096, Appendix A to Part 26.
- c. The good faith efforts and the results thereof shall be documented by the contractor and made available to INDOT and the Federal Highway Administration upon request.
- d. A firm will not be considered a DBE unless it is currently certified by the Indiana Department of Administration. Only work with DBEs that are

certified prior to the date of notice to proceed, unless waived for special conditions, will count toward the goal. Credit towards contract goals will be given only for work performed by certified DBEs in the work areas for which they have been certified.

- e. Achievement of the DBE goal does not relieve the consultant of the requirement for affirmative actions on subsequent subcontracting or partnering on this contract.
- f. The same requirements with respect to obtaining the goal apply for a consultant that is certified as a DBE.
- g. DBE firms must meet all applicable Indiana eligibility standards for the level and type of participation anticipated.
- h. Consultants shall cooperate with the state in any studies and surveys of the consultant's DBE procedures and practices that the state may from time to time conduct.
- i. The consultant shall submit periodic reports of its DBE subcontracting in such form and manner and at such times as the state may prescribe.

4. Leases and Rentals

The consultant shall notify INDOT when purchases or rental of equipment (other than leases for hauling) are made with DBEs. The information submitted shall include the name of the business, the dollar amount of the transaction, and the type of purchase made or type of equipment rented.

5. Changes in DBE Participation

- a. A written request for a changes to a DBE firm listed in the Affirmative Action Certification shall be approved prior to start of listed services by Central Office Economic Opportunity Director. Requests to reduce or eliminate the services provided by a listed DBE that are accompanied by a written statement of agreement from the DBE may be considered sufficient justification, if the committed DBE utilization after the requested change will meet or exceed the contract goal or a lesser percentage approved prior to execution of the contract. If the committed DBE utilization, after the change, does not meet or exceed the contract goal or a lesser percentage approved prior to execution of the contract, or the listed DBE does not agree with the change, the consultant shall submit documented evidence that the DBE is unable to perform successfully. Disposition of the request for change will be determined on the basis of the affirmative actions taken as required herein.
- b. When a DBE firm is removed from eligibility and is no longer certified, the consultant shall take the following steps:
  - 1. If a subcontract has not yet been executed, the consultant shall not count work performed by the firm toward the contract goal. The consultant will be directed to meet the contract goal with an eligible DBE firm or demonstrate that it has made a good faith effort to do so.
  - 2. If a subcontract has been executed before the firm has been declared ineligible, the consultant shall continue to count work performed by the firm toward the contract goal.

c. DBE Joint Ventures

Type A (separate firms performing separate identifiable work as separate firms) do not require DBE joint venture certification. DBE joint ventures Type B (separate firms merging as one to perform work) do require DBE joint venture certification. A request for DBE joint venture Type B certification shall be submitted not later than 9:00 a.m. local time at least two (2) days prior to the submission date and shall be approved prior to the submission of the proposal in order to receive credit toward the DBE goal. The DBE(s) involved shall be certified as DBEs prior to requesting DBE joint venture certification. The work for the DBE shall be identified, performed, managed, and supervised by its forces in accordance with industry standards and practices and 49 CFR, Part 26.

6. Guidelines for Determining Good Faith Efforts.

Appendix A of 49 CFR Part 26 has been used for guidance in preparing INDOT's procedures to determine the adequacy of good faith efforts. Additional factors consistent with 49 CFR Part 26, and INDOT's policies and procedures have also been used.

The following factors will be considered in determining good faith efforts. The consultant, including DBE consultants, shall submit written evidence on each of the factors to INDOT upon request. This list is not intended to be conclusive or exhaustive, but is intended to show examples of what is meant by "good faith efforts."

- a. The consultant shall make reasonable efforts to contact all appropriate ready, willing, and able DBEs who express a desire to work on any phase of the work required in accordance with this Request for Proposals. Documentation of initial and follow-up solicitations made to DBEs for subcontracting opportunities should be made. The consultant must obtain a current listing of certified DBEs from the Indiana Department of Administration's DBE directory located on its website.
- b. To effectively participate, the consultant shall give the DBE a sufficient opportunity to review the potential scope of work and submit statements of interest prior to the submission deadline. Information provided by the consultant to the DBEs shall include, at a minimum, all appropriate information required for an appropriate response, and the date and time of the desired response.
- c. The consultant shall select the portions of the work to be performed by DBEs in order to increase the likelihood of DBE participation. This shall include, where appropriate, an attempt to break down the contract into economically feasible units to facilitate DBE participation.
- d. The consultant shall provide the interested DBEs with available information about the potential scope of work of the project. Attempts shall be made to have appropriate information available or to notify the DBE of the location of such available information. The consultant shall notify the DBE of all appropriate revisions. List of efforts used to

attract DBE firms should be made, including any advertising submitted to trade journals, newspapers, minority focus publications and other available non-traditional media where DBE firms are likely to learn of subconsulting opportunities.

- e. It will be considered unacceptable to avoid subcontracting to DBEs, if such subcontracting to DBEs results in the need to further subdivide work elements.
- f. The consultant shall negotiate in good faith with interested DBEs with the intent of hiring and not reject such DBEs as unqualified without sound reasons based on thorough investigation of their capabilities. Confirmed documentation that a DBE has not been able to perform previous work through no fault of others will be considered to be sound reason. Unacceptable criteria include, but are not limited to, unsubstantiated oral statements and unsigned documentation.
- g. The consultant shall make efforts to provide reasonable assistance to interested DBEs to facilitate their participation. However, the consultant shall affirmatively consider waiving requirements it may have in order to assist the DBE.

#### 7. Affirmative Action Certification and DBE-3 Form.

The Affirmative Action Certification, attached hereto, shall be completed when the Proposal is submitted to the Department. The certification shall list all DBEs included in the proposal and shall include a brief explanation stating the type of work or services that the DBE will be performing. In addition to the listing of DBE firms that will be used to meet the goal, the consultant shall also provide an estimated percentage for the amount of work that it anticipates will be performed by other DBE firms on the contract, beyond the goal requirements, if any.

Upon completion of the contract and subsequent payment of its subconsultants and/or receipt of notification from the Department, a Disadvantaged Business Enterprise Utilization Affidavit, Form DBE-3, shall be provided by INDOT, completed by the consultant and returned to the INDOT. The consultant and the DBE subconsultant shall certify on Form DBE-3 the actual specific amounts that have been paid and received. A DBE-3 Form certification shall be completed and submitted for every DBE used on the contract, not just those listed on the Affirmative Action Certification.

#### 8. Records and Reports

The consultant shall keep such records as necessary to determine compliance with its DBE utilization obligations and compliance with the Guidelines for Determining Good Faith Efforts and make such records and reports available upon the request of INDOT.

#### 9. Good Faith Efforts Review Procedure

The selection of the consultant will be made based on the proposal and its compliance with the Request for Proposal. If the consultant has achieved

less than the DBE goal, the consultant include with its proposal, documented evidence of its good faith efforts to achieve the DBE goal. All affirmative actions taken to achieve the goal shall be identified. Failure to include the required "good faith efforts" documentation may result in rejection of the proposal.

If the Commissioner determines that adequate good faith efforts have been made, the selection will be made.

If the Commissioner determines that the good faith efforts were inadequate, the Department may reject the proposal and award to the next eligible consultant.

The Commissioner's final order will be the final decision of the Department. A party objecting to the Commissioner's decision may seek legal remedies through judicial review.

**AFFIRMATIVE ACTION CERTIFICATION**

I do hereby certify that it is the intention of my company to affirmatively seek out and consider certified DBEs to participate as part of this proposal

I understand and agree that all subconsulting in connection with this proposal, whether undertaken prior to or subsequent to the notice to proceed will be in accordance with the requirements for the Disadvantaged Business Enterprise Program, included elsewhere in this RFP. I understand and agree that no subcontracting will be approved or commenced until the Department of Transportation has reviewed and approved the affirmative actions taken by my company or me.

I understand that utilization of certified DBEs is in addition to all other equal employment requirements of this RFP.

I acknowledge that this certification is to be made an integral part of this proposal.

I understand and agree that the submission of a blank certification shall cause the proposal to be rejected.

I hereby certify that contact has been made with the certified DBEs listed in this certification. If my company becomes the CONSULTANT, the certified DBEs have tentatively agreed to perform the services. I understand that neither my company nor I will be penalized for amounts achieved over or under the amount shown for voluntary DBE utilization anticipated over the goal. However, INDOT may request an explanation for any variances.

**SUBCONSULTANTS****Certified DBE Name & Address****Type(s) of Work**

1.

2.

3.

4.

5.

6.

Approximate Percentage Credited toward DBE Goal (RC)\_\_\_\_\_

Approximate Percentage of Voluntary DBE Work Anticipated over DBE Goal (RN)\_\_\_\_\_

Name of Company\_\_\_\_\_

By:\_\_\_\_\_

Date\_\_\_\_\_

\_\_\_\_\_  
Individual's Name and Title (printed or typed)